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Witness Deputy William Robert (IAB)

Witness Deputy William Robert (Homicide Bureau)

Witness [redacted] (Homicide Bureau)

Witness [redacted] (Homicide Bureau)

Involved Employee Deputy Casey Cheshier (IAB)

Involved Employee Deputy Casey Cheshier (Homicide Bureau)

Involved Employee Deputy Juan Rodriguez (IAB)

Involved Employee Deputy Juan Rodriguez (Homicide Bureau)

Involved Employee Deputy Johnny Montenegro (IAB)

Involved Employee Deputy Johnny Montenegro (Homicide Bureau)

EXHIBITS

A One Digital Versatile Disc containing Homicide Book, under file number 016-16513-0468-013

B Los Angeles County District Attorney's Office – Bureau of Fraud and Corruption Prosecutions Justice System Integrity Division, Letter of Opinion dated August 29, 2018.

C One (1) USB 3.0 16GB Flash Drive containing the following:

Dispatch 13 Radio Traffic
LTAC Radio Traffic
CTAC1 Radio Traffic
Crisis Negotiation Team Telephone Call Audio
Pertinent Surveillance Video
Scientific Services Bureau Crime Scene Photographs

D One (1) USB 3.0 32GB Flash Drive and One (1) USB 3.0 16B Flash Drive Containing All Surveillance Video

E Aerial Photographs #1 and #2, Deputy Cheshier, IAB interview.

F Aerial Photographs #1 and #2, Deputy Rodriguez, IAB interview

G Aerial Photographs #1 and #2, Deputy Montenegro, IAB interview

H Aerial Photographs #1 and #2, Deputy Moss, IAB Interview

MISCELLANEOUS DOCUMENTS

(14) Administrative Rights Force/Shooting Investigation Forms

Norwalk Station PM In-Service, dated November 21, 2016



LOS ANGELES COUNTY DISTRICT ATTORNEY'S OFFICE
BUREAU OF FRAUD AND CORRUPTION PROSECUTIONS
JUSTICE SYSTEM INTEGRITY DIVISION

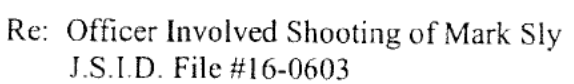
JACKIE LACEY • District Attorney
JOHN K. SPILLANE • Chief Deputy District Attorney
JOSEPH P. ESPOSITO • Assistant District Attorney

SCOTT K. GOODWIN • Director

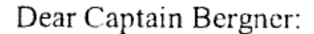
August 29, 2018

Captain Christopher Bergner
Los Angeles County Sheriff's Department
Homicide Bureau
1 Cupania Circle
Monterey Park, California 91755

CONTENTS 9/5/18 CAPT. C. BERGNER NOTED



Re: Officer Involved Shooting of Mark Sly
J.S.I.D. File #16-0603
L.A.S.D. File #016-16513-0468-013



Dear Captain Bergner:

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the November 22, 2016, fatal shooting of Mark Sly by members of the Los Angeles County Sheriff's Department. Our detailed analysis of this incident is contained in the attached memorandum.

Very truly yours,

JACKIE LACEY
District Attorney



SHANNON PRESBY
Head Deputy District Attorney
Justice System Integrity Division

c: Deputy Casey Cheshier, #[redacted]
Deputy John Montenegro, #[redacted]
Deputy Juan Rodriguez, #[redacted]

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MEMORANDUM

TO: CAPTAIN CHRISTOPHER BERGNER
Los Angeles County Sheriff's Department
Homicide Bureau
1 Cupania Circle
Monterey Park, California 91755

FROM: JUSTICE SYSTEM INTEGRITY DIVISION
Los Angeles County District Attorney's Office

SUBJECT: Officer Involved Shooting of Mark Sly
J.S.I.D. File #16-0603
L.A.S.D. File #016-16513-0468-013

DATE: August 29, 2018

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the November 22, 2016, fatal shooting of Mark Sly in La Mirada, California, by Los Angeles County Sheriff's Department (LASD) Deputies Casey Cheshier, John Montenegro, and Juan Rodriguez. We find that the deputies acted in lawful self-defense and defense of others.

The District Attorney's Command Center was notified of this shooting on November 22, 2016, at 2:00 a.m. The District Attorney Response Team responded to the scene and was given a briefing and walk-through by LASD Lieutenant Steven Jauch.

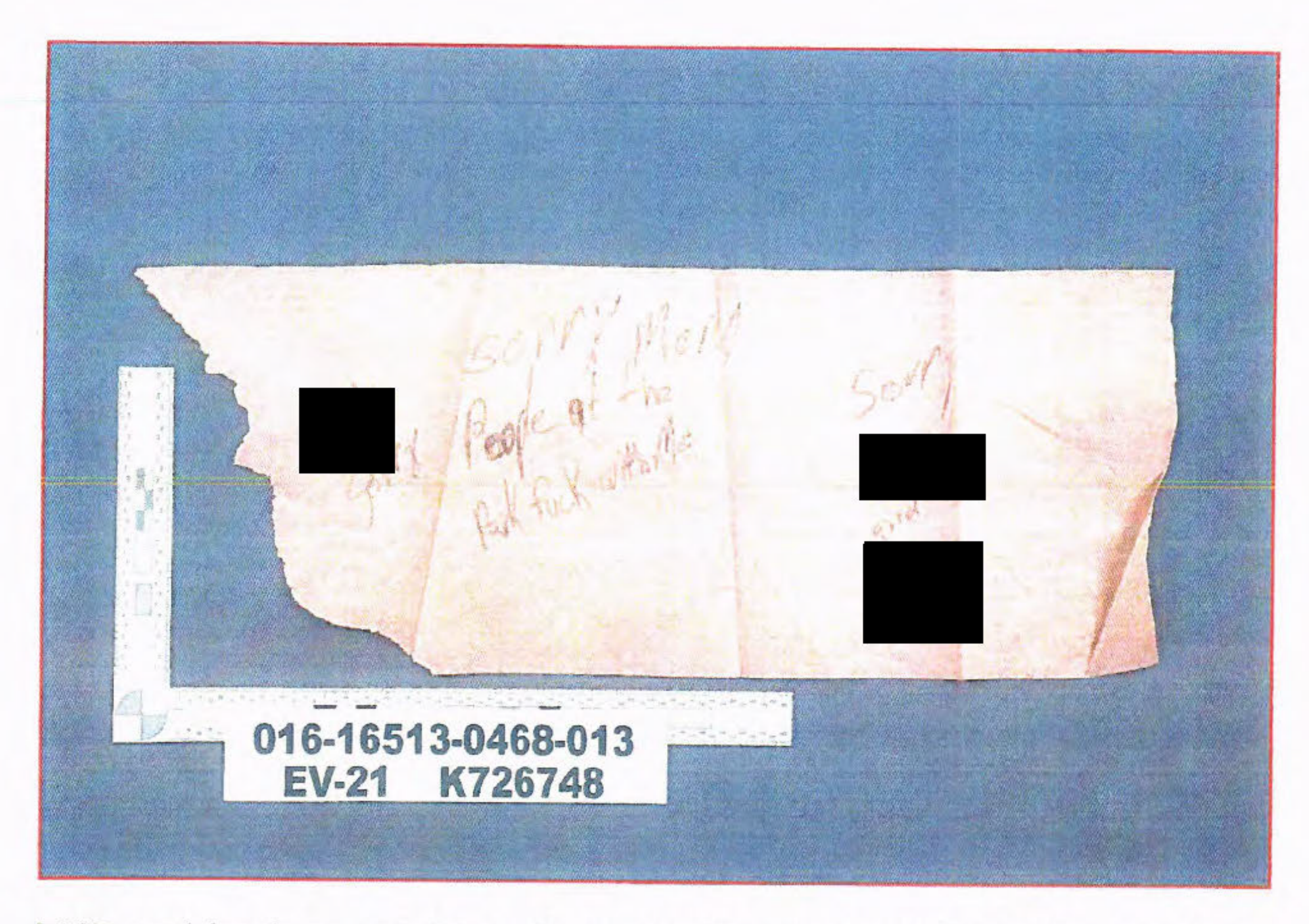
The following analysis is based on reports prepared by the LASD Homicide Bureau, submitted to this office by Detectives Kevin Acebedo and Phillip Martinez. The reports include photographs, surveillance videotape, and audio-recorded interviews of witnesses.

FACTUAL ANALYSIS

On November 21, 2016, at approximately 9:12 p.m., Mark Sly, who had the presence of methamphetamine and alcohol in his bloodstream, and a history of substance abuse, mental health issues, and suicide attempts, entered a convenience store, armed with a stolen and loaded .38 caliber revolver, planning to commit "suicide by cop."[1]

Sly threatened the cashier and customers with the gun, barricaded himself inside the store, and wrote an apparent suicide note that said, "[redacted] sorry," "sorry [redacted]" "people at the park fuck with me," and "sorry [redacted] and [redacted]"[2] A photograph of the note is shown below:

[1] In months prior, Sly explained to friends that he intended to commit suicide by taking over a convenience store gas station, waving a gun around, shooting through the window, and forcing the police to shoot and kill him.
[2] Sly's [redacted] is named [redacted]



LASD patrol deputies responded to a "robbery now" radio call and saw Sly inside the store with a handgun. The deputies contained the location and ordered Sly to drop the gun and surrender. Sly did not comply and remained barricaded inside the store. The deputies asked LASD's Special Enforcement Bureau's (SEB) Special Weapons Team (SWT), and the Crisis Negotiation Team, to respond.

At 9:33 p.m., a LASD crisis negotiator began speaking with Sly on the telephone. Sly said he was upset over previous contacts with law enforcement and was unable to get financial assistance for his [redacted] Sly maintained a periodic dialogue with the negotiator for several hours, but refused to surrender.

At 11:55 p.m., SWT personnel relieved the patrol deputies, established a containment of the store, and took control of the scene.

At 12:04 a.m., Sly fired a round that shattered the front window of the store. A short time later, Sly appeared in the front door of the store, with the gun in his right hand, behind his back, and yelled something unintelligible at the deputies. When Sly brought the gun from behind his back and appeared to be ready to shoot at the containment deputies, Deputy Cheshier fired two rounds at Sly, who retreated into the store, possibly uninjured by the gunfire.[3]

[3] Sly had a total of seven gunshot wounds to his body. Six projectiles were recovered from six of the wounds, and those rounds are attributed to shots fired by Montenegro and Rodriguez. The seventh wound was a through-and-through gunshot wound to Sly's left arm and that projectile was not recovered. It cannot be determined if that injury

At 12:27 a.m., Sly put his head down, covered his face with his arm, and charged through the front doors of the store, firing rounds at the deputies and striking their armored vehicle. Montenegro and Rodriguez responded by firing their service weapons six times at Sly, striking him six times and killing him.

A still photograph taken from video of the incident showing Sly exiting the store and firing his gun at the deputies is shown below:



Figure 1 - Still photograph taken from news media coverage showing Sly charging through the front door of the convenience store and firing at the deputies. Muzzle flash is observable in the video, and is shown circled in red.

Sly dropped his gun. When it was inspected, the gun was loaded with three live rounds and had three expended cartridges, which is consistent with Sly firing three times during the incident. A photograph of the gun is shown below:



Figure 2 - Photograph of Sly's .38 caliber handgun recovered on the ground near his body. Sly stole the gun from a [redacted] *shortly before the shooting.*

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was caused by one of Cheshier's gunshots, or whether that wound was caused by one of Rodriguez or Montenegro's rounds passing through Sly's arm and into his body.

LEGAL ANALYSIS

The Law

California law permits the use of deadly force in self-defense or in the defense of others if the person claiming the right actually and reasonably believed that he or others were in imminent danger of great bodily injury or death. Penal Code § 197; *People v. Randle* (2005) 35 Cal.4th 987, 994 (overruled on another ground in *People v. Chun* (2009) 45 Cal.4th 1172, 1201); *People v. Humphrey* (1996) 13 Cal.4th 1073, 1082; *see also,* CALCRIM No. 505. California law also states that, in protecting himself or another, a person may use all the force which he believes reasonably necessary and which would appear to a reasonable person, in the same or similar circumstances, to be necessary to prevent the injury which appears to be imminent. "The 'reasonableness' of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than the 20/20 vision of hindsight…The calculus of reasonableness must embody allowance for the fact that the police are often forced to make split-second judgments - - in circumstances that are tense, uncertain, and rapidly evolving - - about the amount of force that is necessary in a particular situation." The test of whether the officer's actions were objectively reasonable is "highly deferential to the police officer's need to protect himself and others." "Where the peril is swift and imminent and the necessity for action immediate, the law does not weigh in too nice scales the conduct of the assailed and say he shall not be justified in killing because he might have resorted to other means to secure his safety."

Analysis

There is compelling evidence in this case, including video of the shootings, and an apparent suicide note, that shows that Sly was suicidal and under the influence of methamphetamine and alcohol when he entered the convenience store, armed with a handgun, for the purpose of provoking deputies into shooting him, thereby committing "suicide by cop."

When Sly fired the round inside the store and then came to the door of the store and raised the gun in the direction of deputies, it was reasonable for Deputy Cheshier to believe that Sly was intending to fire at the deputies again, and therefore he acted reasonably in firing at Sly in order to protect himself, the other deputies, and the public.

Ultimately, when Sly charged through the front doors of the store toward the deputies, aimed a loaded gun at them, and fired at them again, Deputies Montenegro and Rodriguez were forced to shoot Sly.

CONCLUSION

Based on a review of all of the evidence in this case, Deputies Cheshier, Montenegro, and Rodriguez acted reasonably when they used deadly force against Sly in lawful self-defense of themselves and others when Sly fired a handgun at them. We are closing our file and will take no further action in this matter.